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## RECENT CASES

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## RECENT CASES

BANKS AND BANKING—SUBROGATION OF STOCKHOLDERS TO RIGHTS OF DEPOSITORS.—*ARTHUR ET AL. V. PEOPLE'S BANK OF UNION ET AL.*, 83 S. E. (S. C.) 778.—Under an act imposing upon stockholders of a bank an individual liability to depositors, *held*, that stockholders who have discharged this liability to the depositors, are subrogated to the rights of the latter in the distribution of newly discovered assets of the insolvent bank, and may participate on an equal footing with creditors. Watts, J., *dissenting*.

By the doctrine of subrogation persons who have discharged a debt for which they were secondarily liable are admitted to the rights of the creditors against the primary debtors. *Lackawanna Trust & Safe Deposit Co. v. Gomeringer*, 236 Pa. 179. No contract of suretyship is necessary; it is sufficient if one is under compulsion of law, or bound by considerations of self-interest, to pay a debt which is, in whole or in part, not his own. *Dill v. Vondelt*, 94 Ind. 590; *Wilson v. Wilson*, 6 Idaho 597; *Opp v. Ward*, 125 Ind. 241. Thus, in the case of two joint obligors, both principals, each stands in the relation of surety to the other, to the extent of his legal liability over and above his own equitable share of the indebtedness. *Wilks v. Vaughan*, 73 Ark. 174; *Sands, Adm'r. v. Durham*, 99 Va. 263. Under provisions similar to those under construction in the principal case, the relation of stockholder to corporation has been held to be one of surety or guarantor to principal. *In re Humboldt Safe-Deposit & Trust Co.*, 3 Pa. Co. Ct. R. 621. However, the elementary rule of law postponing stockholders as such to the general creditors in the distribution of assets is a recognition of some degree of proprietary identity between corporation and stockholder. *Reagan v. Chicago First Nat. Bank*, 157 Ind. 623. This consideration has led a California court to treat the individual liability of stockholders imposed by law as primary, and therefore to deny the right of subrogation. *Sacramento Bank v. Pacific Bank*, 124 Cal. 147. The same result was reached in New York, under a statute since repealed. *Hollister v. Hollister Bank*, 41 N. Y. 245. An analogy drawn from the relation of partner toward the firm debts lends some support to this view. *Bailey v. Bromfield*, 8 Harris (Pa.) 41. Authorities directly in point are meagre, but a few unqualifiedly sustain the principal case. *Appeal of Craig*, 92 Pa. St. 396; see *City Bank of Macon v. Crossland*, 65 Ga. 734. This conclusion can hardly be escaped, if we grant, what seems to be the more prevalent and reasonable view, that the statute in question is designed to create a compulsory suretyship in the interest of the depositors, and not to enforce a primary duty resting upon the stockholders by virtue of their substantial identity of interest with the corporation.

BILLS AND NOTES—TRANSFERS—ILLEGAL CONSIDERATION.—PENNY SAVINGS BANK v. FITZGERALD, 149 N. W. (IOWA) 497.—*Held*, that a negotiable note is not void in the hands of a *bona fide* holder because founded on an illegal or immoral consideration, unless made so by positive statute.

Where a statute provides that all negotiable instruments given in consideration of patented machines or patent rights shall be absolutely void unless they show on their face that they were executed for such consideration, they are void even in the hands of a purchaser in due course. *Wyatt v. Wallace*, 67 Ark. 575. Where a note is void because of usury, a purchaser for value cannot enforce it. *Cousins v. Siegman*, 142 N. Y. Supp. 348. The language of the statute decisive of this last case is "the court shall declare the same (usurious note) void and enjoin prosecution thereon." When a statute merely makes the consideration of a note illegal, the note is valid in the hands of a holder in due course. *Bluthenthal & Bickart v. City of Columbia*, 57 So. (Ala.) 814. Though a seller of a patent right who fails to express the consideration on the face of a note is guilty of a misdemeanor, the note is not rendered void in the hands of a bona fide holder. *Smith v. Wood*, 111 Ga. 221. The illegality of the consideration of a negotiable note does not vitiate it in the hands of a bona fide purchaser whether the illegal act is *malum in se* or *malum prohibitum*, unless the statute making the act illegal expressly or by necessary implication makes the instrument absolutely void. *Gray v. Boyle*, 55 Wash. 578.

So that in an action by a holder in due course, it is not a legal defense that the note was executed on Sunday or on account of a stock gambling transaction. *Myers v. Kessler*, 142 F. 730. There is no question but that where the statute in direct terms declares that a note given in violation thereof shall be void, the note is void no matter into whose hands it may pass. *New v. Walker*, 108 Ind. 365. The holding of the principal case is sound and represents the law under the Negotiable Instruments Law.

DESCENT AND DISTRIBUTION—CAUSING OR PROCURING DEATH OF INTTESTATE.—*WALL V. PFANSCHMIDT ET AL.*, 106 N. E. (ILL.) 795.—Under a statute which provided how property should descend on the death of an intestate it was held that a son who murdered his father, mother and brother in order to obtain their property could take an absolute title on the ground that the statute made no exception in such a case.

At common law there was a rule to the effect that "No one shall be permitted to acquire property by his own crime." This has been held to prevent the taking by a murderer of the property of his victim at common law. *Box v. Lanier*, 112 Tenn. 393; *Cleaver v. Mutual Reserve & Insurance Co.*, L. R. 1 Q. B. 147; *Wharton on Homicide* (3d Ed.), Sec. 665. In the above cases the courts reasoned on grounds of public policy; it was against the public interest to furnish an incentive to crime. However, where a state has passed a statute defining how property shall descend the weight of authority is that the courts cannot read in any exceptions whatever; the murderer must take by descent like any one else. The argument is that the statute makes nearness of relationship and not character or conduct the test and that when the legislature has spoken it settles the whole matter and the courts must conform no matter how unjust a result may follow. *Deem v. Milliken*, 6 Ohio 357; *Ayres v. Trego City*, 37 Kans. 240; *McAllister v. Fair*, 72 Kans. 533; *In re Carpenter's Estate*, 170 Pa.

203; *Gollnik's Estate*, 112 Minn. 349. In *Shellenberger v. Ransom*, 31 Neb. 61, the court considered the common law maxim and denied the murderer's right to take under the statute, but on a re-hearing, 41 Neb. 631, this decision was reversed on the ground that the court could not read an exception into an unambiguous statute. The only case which squarely conflicts with the weight of authority seems to be *Perry v. Strawbridge*, 209 Mo. 621. There it was held that a husband who had murdered his wife could not take under the statute because the statute must be construed in the light of the common law, which never allowed property to descend in such a case. This case admits that the weight of authority is otherwise. The very manifest danger that such a state of the law may furnish an incentive to crime has been recognized in several states, notably Tennessee, California and Iowa, and the statutes have been amended to prevent anyone taking by descent by reason of his own felonious act.

DOWER—INCHOATE RIGHT—INJUNCTION OF WASTE BY ALIENEE.—RUMSEY v. SULLIVAN ET AL., 150 N. Y. Supp. 287.—*Held*, that a wife who has not joined in the conveyance of land by her husband, is not entitled to an injunction against waste by the alienee, even though the substantial value of her interest is threatened with destruction. Kruse, P. J., *dissenting*.

The inchoate right of dower, while always regarded with especial solicitude by the law, is not an estate in land within the protection of the constitutional guaranties of property rights. *Barbour v. Barbour*, 46 Me. 9. Nor is it entitled to compensation upon extinction through the exercise of the right of eminent domain. *Moore v. Mayor*, 8 N. Y. 110. It is, however, a substantial interest, indefeasible by the sole alienation of the husband. *House v. Jackson*, 50 N. Y. 161. Nor can it be defeated by execution in behalf of his creditors. *Jewett v. Feldheiser*, 68 Oh. St. 523. It has a present money value capable of estimation by well defined rules. *Jackson v. Edwards*, 7 Paige (N. Y.) 386. So substantial is the interest, that a wife who has joined in a mortgage of the estate has been regarded as a surety, entitled accordingly, by subrogation, to a share of the surplus proceeds upon a foreclosure sale. *Matthews v. Duryee*, 4 Keyes (N. Y.) 525. *Contra*, *Newhall v. Savings Bank*, 101 Mass. 428. Cf. *Gore v. Townsend*, 105 N. C. 228 (entitled to exoneration). The inchoate dower right is protected scrupulously against fraud which threatens it *in toto*. *Simar v. Canaday*, 53 N. Y. 298; *Burns v. Lynde*, 6 Allen (Mass.) 305. Even dower consummate, however, has been held not entitled to protection from depreciation through waste. *Powell v. Mfg. Co.*, 3 Mason (U. S.) 365; *Hales v. James*, 6 Johns. Ch. (N. Y.) 260; *McClanahan v. Porter*, 10 Mo. 746. Furthermore an alienee is, in America, specially favored to the extent of an allowance for his improvements prior to the assignment of dower. *Thompson v. Morrow*, 5 S. & R. (Pa.) 290; *Catlin v. Ware*, 9 Mass. 218. This has been carried so far that a dower claimant was denied the benefit of an improvement which was merely a reparation of previous waste. *Wisteoll v. Campbell*, 11 R. I. 378. The principal case, though one of unusual hardship, accords with the above-delineated policy of the law, which protects the dower right

only as a totality, while affording no protection against contingencies affecting merely the *quantum* of the interest. A dower claimant, as a mere volunteer, has of course less equity than a lien-holder, to whom in other respects her position is most comparable.

EVIDENCE—EXPERT WITNESSES—READING OF SCIENTIFIC BOOKS—ULLRICH v. CHICAGO CITY RY. CO., 106 N. E. (ILL.) 828. Where a physician, testifying that hysteria can never result from a physical injury but is congenital, based his opinion on his own observation and experiences, without relying on any text-books or writers on the subject, a cross-examination consisting of references to medical works, so as to convey to the jury the impression that the physician was testifying contrary to medical authority on the subject of hysteria, was improper.

In general a broad range of inquiry is permitted in cross-examining experts. *Trull v. Modern Woodmen*, 12 Ind. 318. Early, however, on the ground of hearsay, it was held improper to allow quotations from medical works as evidence. *Collier v. Simpson*, 5 C. & P. 73. The preponderance of cases hold this view. *Gallagher v. Ry. Co.*, 67 Cal. 16; *Galveston Ry. v. Hanway*, 94 Tex. 76; *Mitchell v. Leech*, 48 S. E. (S. C.) 290; *Hall v. Murdock*, 114 Mich. 233; *Butler v. South Carolina Co., etc.*, 130 N. C. 15. In Wharton on Evidence, sec. 665, the reasons for the rule are stated with approval. The contrary rule has been adopted in Iowa and Alabama. *Bowman v. Woods*, 19 Greene (Iowa) 445; *Stoudenmeier v. Williams*, 29 Ala. 558; *Bales v. State*, 63 Atl. (Ala.) 38. In *Sale v. Eichberg*, 105 Tenn. 333, it was held proper to read from a medical work to test a witness's capacity. In *Clukey v. Seattle Electric Co.*, 27 Wash. 70, the exclusionary rule was narrowed by the holding that when, on cross examination, the question was asked whether medical authorities did not lay down certain rules, the reading of such rules from an author's work was proper. *Conn. Mut. Co. v. Ellis*, 89 Ill. 516, held that paragraphs from books might be read and the witness asked if he agreed. *Hess v. Lowrey*, 122 Ind. 225, and *City of Ripon v. Bittel*, 30 Wis. 614, held that the same may be done to test the learning of the witness. Cf. *Western Assurance Co. v. Mohlman*, 83 Fed. 811. A ruling contrary to that of the principal case was adopted in *State v. Hoyt*, 46 Conn. 330, on the ground that the practice had been permitted by tacit consent for many years. The rule of the principal case is criticized in Wigmore on Evidence, sec. 1690 *et seq.*, and Crosswell's Greenleaf on Evidence, 15th ed. sec. 497, note 4. In Rogers on Expert Testimony, sec. 174, however, it is stated that "the rule (of *Ullrich v. Chicago City Ry.*) is supported by the better reason." There is no question that the decision of the principal case accords with the weight of authority, but it would seem, for the reasons pointed out by Wigmore, that the opposite view is sounder on principle, since the objections urged go rather to the weight than the competency of the evidence.

HUSBAND AND WIFE—ADVANCES TO HUSBAND—INTEREST.—RIKER v. RIKER, 92 ATL. (N. J.) 586.—*Held*, a husband is not required to pay inter-

est on advances to him by his wife in the absence of a special agreement to that effect.

On money paid on account of another, or to the use or benefit of another, or at the request of another, interest is allowable from the time payment is made. *Hodges v. Hodges*, 9 R. I. 32. A husband and wife may enter into the relation of debtor and creditor. *Rowland v. Plumme*, 50 Ala. 182; *Logan v. Hall*, 19 Iowa 491. But mere delivery of money without other evidence of a contract raises no legal presumption that the transaction was a loan. *Coburn v. Storer*, 67 N. H. 86. Therefore the wife's right as a creditor must be clearly established. *Hamill's Appeal*, 88 Pa. 363; *Brady v. Brady*, 58 Atl. (N. J.) 931. Hence if the husband and wife treat each other as borrower and lender and there is nothing which would make it inequitable to require the payment of interest, it should be allowed. *Hodges v. Hodges, supra*. On principle, a wife should be allowed interest on loans to her husband the same as on loans to a stranger. Where a loan has been clearly shown, there is no logical reason for requiring further evidence of a promise to pay interest on the loan.

INFANTS—CONTRACTS—DISAFFIRMANCE.—CHAMBERS ET AL. V. CHATTANOOGA UNION RY. CO. ET AL., 171 S. W. (TENN.) 84.—*Dictum*: If a female infant contracts as to realty and then, before attaining majority, marries, she must disaffirm the contract within a reasonable time after coming of age, if at all.

In Tennessee, married women may contract only with reference to their mercantile or manufacturing business. *Shannon's Supplement to the Code of Tennessee*, Sec. 4241. In all other respects their rights are determined by common law. Throughout the country the prevailing doctrine is that if a female infant marries and then contracts, her husband being joined, she must disaffirm within a reasonable time after both the disabilities of coverture and infancy are gone, if at all. *Sims v. Bardoner*, 86 Ind. 87 (33 years after making of contract); *Matthewson v. Davis*, 2 Colo. 451; *Gaskins v. Allen*, 137 N. C. 426; *Sims v. Everhardt*, 102 U. S. 300. No infant may disaffirm a contract concerning real property until majority is attained. *Zouch v. Parsons*, 3 Burr. 1808; *Tucker v. Moreland*, 10 Pet. 58; *Shipley v. Bunn*, 125 Mo. 445; *Shroyer v. Pittenger*, 31 Ind. App. 158. Hence the infant in the principal case could not disaffirm until after marriage (which occurred before majority) because of infancy, and could not during coverture. So sound reason would seem to point out that she should have until a reasonable time after discoverture in which to disaffirm. The dictum is erroneous on common law principles.

INFANTS—CONTRACTS.—CHAMBERS V. CHATTANOOGA UNION RY. CO., 171 S. W. (TENN.) 84.—*Held*, that when the court can pronounce the contract to be to the infant's prejudice, it is void; when to his benefit, as for necessaries, it is good; and, when the contract is of an uncertain nature as to benefit or prejudice, it is voidable only at the election of the

infant. The contract in the principal case was pronounced to be to the infant's prejudice and hence void.

This classification was first set forth in the English case of *Keane v. Boycott*, 2 H. Bl. 511. It has been cited and approved in this country. *Cummings v. Powell*, 8 Tex. 80; *Kline v. Beebe*, 6 Conn. 494; *Green v. Wilding*, 59 Iowa 679. The classification has been followed in a number of other cases. *Robinson v. Weeks*, 56 Me. 102; *Tucker v. Moreland*, 10 Pet. 58; *Dunton v. Brown*, 31 Mich. 182; *Breckenridge's Heirs v. Ormsby*, 24 Ky. 236. The last-named case disapproves of the rule but considers itself bound by precedent. The great majority of modern decisions refuse to call any contract of an infant void, with the possible exception of a power of attorney, but classify them as binding, when for necessities, or voidable. *Gillespie v. Bailey*, 12 W. Va. 70; *Logan v. Gardner*, 136 Pa. 588; *Semmon v. Beeman*, 45 Oh. St. 505; *Person, Adm'r. v. Chase*, 37 Vt. 648; *Weaver v. Jones*, 24 Ala. 420; *Bozeman et al. v. Browning et al.*, 31 Ark. 364; *Morton v. Steward*, 5 Ill. App. 533; *Philpot v. Sandwich Mfg. Co.*, 18 Neb. 54. This second classification amply protects the infant, while it relieves the courts of the arduous task of determining whether a particular contract is prejudicial or not, a distinction which necessarily must be arbitrary and doubtful. All the modern text-writers and authorities favor the second classification as being more just and beneficial than the rule laid down in the principal case. Clark on Contracts, 223-224; Pollock on Contracts, 53; Tiffany on Persons, 387-390.

INSANE PERSONS—CONTRACTS—VALIDITY—BRAUER v. LAWRENCE, 150 N. Y. SUPP. 497.—*Held*, where a person who had been adjudicated incompetent to manage her affairs by a judgment of the state of her residence, she was conclusively presumed incapable of contracting and her contract for professional services of attorneys was void.

The general rule is that when the insanity has been judicially adjudged, the contract of an insane person is void. *Hanley v. Loan & Investment Co.*, 44 W. Va. 450; *Carter v. Beckwith*, 128 N. Y. 312. This was held so even where the adjudication was in another state. *Bank v. Boone*, 102 Ga. 202. The great weight of authority is that such a contract is merely voidable if the sanity has not been judicially declared. *Bunn v. Postell*, 107 Ga. 490; *Insurance Co. v. Sellers*, 154 Ind. 370; *Busk v. Fenton*, 77 Ky. 490; *Morris v. Railway Co.*, 67 Minn. 74; *Ratcliff v. Adm'r.*, 13 Idaho 152. Where the insanity has not been judicially declared and the sane person does not know of it, and the contract is so far performed that the parties cannot be put in *statu quo*, the contract is binding on the insane person. *Commonwealth v. Forsythe*, 28 Ky. Law Rep. 1038; *Nutter v. Ins. Co.*, 136 N. W. (Iowa) 891. All jurisdictions allow a recovery for necessities furnished him, but this is really a quasi-contractual remedy. *Brown v. Bill*, 132 Ala. 85; *Shaw v. Thompson*, 33 Mass. 198; *In re Stiles*, 120 N. Y. Supp. 714. The sane person is never allowed to avoid the contract. *Mead v. Stigall*, 77 Ill. 679.

LANDLORD AND TENANT—DEFECTIVE CONSTRUCTION OF BUILDING—DAMAGES—LIABILITY OF LANDLORD.—LEVINE v. McCLENATHAN, 92 ATL. (PA.) 317.—*Held*, where a tenant's stock of merchandise was damaged from leakage of water, due to defective construction existing when the lease was executed, and where there was no covenant of warranty that the building was in a tenable condition, or provision requiring the landlord to repair, the landlord was not liable.

Where a landlord agrees to make repairs, which he subsequently refuses to make, he is liable for all injuries caused by his failure to make them. *Mason v. Howes*, 122 Mich. 329. A landlord who at the request of his tenant undertakes to make repairs is liable for the negligent conduct of the work to the same extent as if he were bound by the lease to do the work. *Wertheimer v. Saunders*, 95 Wis. 573. A landlord is liable for injuries to property caused by his failure to repair any part of the premises which is reserved by him for the use of all the tenants in the building. *Karp v. Barton*, 164 Mo. App. 389. The landlord is not always exempt from liability for damage due to the defective condition of the premises existing when the lease was executed. If a landlord, with knowledge that the premises are defective or dangerous and that such defect is not discoverable by the tenant by the use of ordinary care, rents such premises, concealing such knowledge, he is liable to the tenant for injuries sustained therefrom. *Holzhauser v. Sheeny*, 31 Ky. Law Rep. 1238. Moreover, a landlord who permits another tenant to make alterations will be liable for the property of a tenant destroyed or injured by negligence in the making of these alterations. *Blickley v. Luce*, 148 Mich. 233. That the landlord is not bound to repair in the absence of an agreement on his part to do so, is well settled. *Weinsteine v. Harrison*, 66 Tex. 546; *Opdyke v. Prouty*, 6 Hun (N. Y.) 242.

MARRIAGE—ANNULMENT—FRAUD CONCERNING HEALTH.—SOBOL v. SOBOL, 150 N. Y. SUPP. 248.—*Held*, that it was fraud, justifying the annulment of a marriage, for the man to conceal the fact that he was afflicted with tuberculosis.

A court of chancery may annul a marriage because of fraud. *Tefft v. Tefft*, 35 Ind. 44; *Wightman v. Wightman*, 4 Johns. Ch. (N. Y.) 343; *Clark v. Field*, 13 Vt. 460. The general rule is that such fraud must go to an essential element of the marriage relation. *Smith v. Smith*, 171 Mass. 404; *Crane v. Crane*, 62 N. J. Eq. 21; *Lyon v. Lyon*, 230 Ill. 366. Under this rule the fraudulent concealment of a chronic venereal disease will be ground for annulling the marriage, because of the contagious and loathsome nature of the disease and the danger of its transmission to the offspring. *Smith v. Smith*, *supra*; *Crane v. Crane*, *supra*; *Ryder v. Ryder*, 66 Vt. 158. But misrepresentations as to the party's social standing or as to his previous character have been held not sufficient to annul the marriage. *Weir v. Still*, 31 Iowa 107; *Beckley v. Beckley*, 115 Ill. App. 27. In the case of *Lyon v. Lyon*, *supra*, a fraudulent representation that the party had been cured of epilepsy was held not sufficient under the above

rule. But where a statute forbids an epileptic to marry, a fraudulent concealment of that fact is ground for annulment. *Gould v. Gould*, 78 Conn. 242, 2 L. R. A. (N. S.) 531. The New York court has adopted a broader rule, in that any misrepresentation of a material fact incidental to the contract of marriage is sufficient to avoid it. *Di Lorenzo v. Di Lorenzo*, 174 N. Y. 467, held that where the plaintiff was induced to marry the defendant by her false representations that he was the father of her child, the marriage was a nullity. See also *Keyes v. Keyes*, 6 Misc. Rep. (N. Y.) 355. The contagious nature of tuberculosis, and the fact that the offspring of a person so afflicted are born with a tendency to become infected, would bring the principal case within the New York rule. Under the more general rule as construed in *Lyon v. Lyon, supra*, the marriage would evidently not be annulled.

MASTER AND SERVANT—INJURIES TO THIRD PERSON—NEGLIGENCE OF SERVANT—OPERATION OF AUTOMOBILE—RESPONDEAT SUPERIOR—MCHARG V. ADT, 149 N. Y. SUPP. 244.—Defendant's wife, having authority to give orders to her husband's chauffeur in the use of the car in her husband's absence with reference to "anything reasonable," while being driven to a club discovered an injured woman by the roadside and directed the chauffeur to go for a doctor. This he did, finding plaintiff, who entered the car, and, on the way back to the injured woman, there was a collision with a wagon in which plaintiff received injuries. Held, the relation of master and servant existed and the defendant was liable for injuries resulting from the chauffeur's negligence. Kellogg, J., *dissenting*.

In general a master is only liable for the acts of his servant which are done within the scope of the servant's employment. *Goodwin v. Rowe*, 135 Pac. (Ore.) 171; *Fielder v. Davison*, 139 Iowa 509. "Scope of employment" has been defined as "those acts which are fairly incident to the employment. Thus any act directed or authorized by the master is included, but acts of the agent willfully done without the authorization of the master are not." *Goodloe v. Memphis, etc., R. R.*, 107 Ala. 233. But to be within the scope of the servant's employment the act must not only be done in the time, but pursuant to the objects of the employment. *Kemp v. Chicago, R. I. and P. R. R.*, 138 Pac. (Kans.) 621; *Ploetz v. Holt*, 144 N. W. (Minn.) 745. These two cases tend to hold *contra* to the principal case. On the other hand, there are many cases that directly support the principal case. For example, where the defendant supplied the automobile for his own and his family's use he was held liable for an injury caused by his chauffeur's negligence although the latter was running the machine under the directions of members of the defendant's family. *Cohen v. Borgenecht*, 144 N. Y. Supp. 399. And in *Davies v. Anglo-American Tire Co.*, 145 N. Y. Supp. 341, it was held that the master's liability does not depend on his ignorance or consent to the servant's acts but solely on the question whether at the time of these acts the servant was acting within the scope of his employment. Upon the whole the general rule of *respondeat superior* would seem to be applicable to the principal case.

MASTER AND SERVANT—LIABILITY OF MASTER TO SERVANT FOR THE MASTER'S OWN TORTS—NON-ASSIGNABLE DUTIES.—*STEELE V. GRANT*, 82 S. E. (N. C.) 1038.—*Held*, that in an action against an employer the negligence of a fellow servant in not furnishing suitable appliances and a safe place in which to work was no defence, that duty not being delegable.

There are several non-assignable duties which a master generally owes. Such is the duty to employ sufficient and competent servants and agents. *Flike v. The B. & A. R. R.*, 53 N. Y. 549. Of the same nature is the duty to furnish proper and safe machinery, implements, facilities and materials for the servant. *Cone v. D. L. & W. R. R.*, 81 N. Y. 206; *English v. Amidon*, 72 N. H. 301; *Rincicotti v. O'Brien Contracting Co.*, 77 Conn. 617. The master may not delegate his duty to make rules reasonably required to prevent accident. *Abel v. President, etc., D. & H. C. Co.*, 103 N. Y. 581; *Daley v. American Printing Co.*, 152 Mass. 581. Likewise, the master must instruct a servant, ignorant of them, concerning the dangers and requirements of the occupation. *Louisville & N. R. Co. v. Miller*, 104 Fed. 124; *Joyce v. American Writing Paper Co.*, 184 Mass. 230. The principal case falls within the second class referred to above. This second class differs from the others in that, although they may be at times impractical or inconvenient for the employer to perform, it is generally impossible for an employer to personally see that every implement in his plant is reasonably safe. Of course he can be made an insurer as under the Workmen's Compensation Acts, but this is not the common law rule, which is that the employer must merely use reasonable care to provide reasonably safe instrumentalities. *Gerrish v. The New Haven Ice Co.*, 63 Conn. 16; see also cases *supra*. These cases, however, hold with the principal case that delegation to a competent agent is never allowable. It is submitted that this rule is too broad, and that the requirement of reasonable care is satisfied when, in a case where as a practical business matter a duty must be assigned to an employee, the employer has done his best to select a competent one. The servant may reasonably be said to assume any risk beyond this, and the courts of New York seem to so hold. *Madigan v. Oceanic Steam Nav. Co.*, 178 N. Y. 242; *Cregan v. Marston*, 126 N. Y. 568.

WILLS—LEGACIES—CONDITIONS—ENCOURAGEMENT OF DIVORCE—*DABOLL V. MOON*, 91 ATL. (CONN.) 646.—*Held*, the condition of a legacy to testator's son to be paid to him on the death of his present wife, or if he should obtain a divorce from her, or should become separated from her, or if within a year after divorce or separation he should marry a good respectable woman, is not contrary to public policy.

A condition attached to a legacy in restraint of marriage generally is invalid as against public policy. *In re Alexander's Estate*, 85 Pac. 308, 149 Cal. 146; *Contra, Harlow v. Bailey*, 189 Mass. 208. This rule, however, does not extend to second marriages. *Herd v. Catron*, 97 Tenn. 662, 37 L. R. A. 731; *Dumey v. Schoeffler*, 24 Mo. 170. But the principal case is not one where the condition is in restraint of marriage but rather tends to promote a separation or divorce. This kind of condition has also been held void as against public policy and the court in the principal case

admits that "perhaps the weight of authority supports this view." *Cruger v. Phelps*, 47 N. Y. Supp. 61; *In re Haight's Will*, 64 N. Y. Supp. 1029. On the other hand the intention on the testator's part to bring about a divorce will not be presumed. *Coe v. Hill*, 201 Mass. 15; *Winn v. Hall*, 1 Ky. Law Rep. 337. Hence a provision of a will by which a bequest in trust was to become absolute on the termination of the beneficiary's marriage relations was held not to be void where the testator's purpose was shown to be to protect his daughter (the beneficiary) from possible depredations of her husband and not to incite her to a separation. *Snorgrass v. Thomas*, 166 Mo. App. 603. When the wife is *already* living separate from her husband at the time the will is made, a bequest in it giving property to the wife provided she remains separated from her husband was held void as against public policy and the legatee took the property freed from the condition. *Witherspoon v. Brokaw*, 85 Mo. App. 169. Where, however, the wife is not absolutely deprived of the property upon resuming marital relations, but retains all the beneficial interest therein as *cestui qui trust* and at her death the principal goes to her children, the condition has been held valid. *Wright v. Mayer*, 62 N. Y. Supp. 610. The doctrine of the principal case is supported by *Ransdell v. Boston*, 172 Ill. 439, 43 L. R. A. 526.

WITNESS—PRIVILEGE—SELF-INCRIMINATION.—COMMONWEALTH V. SOUTHERN EXPRESS CO., 169 S. W. (KY.) 517.—*Held*, the constitutional privilege against self-incrimination does not extend to corporations and the privilege may not be claimed for the corporation by its officers and agents.

The privilege above referred to contained in the fifth amendment to the Federal constitution is personal, and is based upon the consideration of the law for the individual in his capacity as a witness. *Brown v. Walker*, 161 U. S. 591; *Commonwealth v. Shaw*, 4 Cush. 594; *Hale v. Henkle*, 201 U. S. 43. Therefore this privilege is not available to a witness on the ground that some third person might be incriminated by his testimony, even though he may be the agent of such person. *Hale v. Henkle, supra*. A corporation is a "citizen" within the fourteenth amendment providing that no state shall deny any person the equal protection of the law. *Santa Clara Co. v. So. Pac. R. R.*, 118 U. S. 394. A corporation is not a "citizen" within the meaning of Art. 4, sec. 2 of the Federal constitution which entitles the citizens of each state to all the privileges and immunities of citizens of the several states. *Paul v. Virginia*, 75 U. S. 168; *Pembina Mining Co. v. Pennsylvania*, 125 U. S. 181. It will be observed that while there is no question but that a corporation is a "person" there is a difference of interpretation as to when a corporation is a "citizen," within the meaning of the constitution. Here it is not the corporation but the agent who is on the stand testifying. In interpreting the Federal constitution and in applying it to corporations, courts have kept in mind the fact that corporations are creations of the state. As Mr. Justice Hughes says: "It would be a strange anomaly to hold that a state, having chartered a corporation, to make use of certain franchises, could not in the exercise of its sovereignty inquire how the franchise had been employed and demand the corporate books and papers for that purpose. *Wilson v. United States*, 221 U. S. 384.